

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty Relief)	
of:)	
)	
WILLIAM Y. MOORES, M.D.)	MBC File # 26-2011-217327
)	
)	OAH No. 2012080273
Physician's & Surgeon's)	
Certificate No. G-28505)	
)	
<u>Respondent.</u>)	

ORDER CORRECTING DECISION AFTER NON ADOPTION

The Proposed Decision of Ruth S. Astle, Administrative Law Judge, dated April 8, 2013 was Non-Adopted and a Decision After Non-Adoption was issued on August 6, 2013, which are attached hereto. Said decision after non-adoption is hereby amended, pursuant to Government Code section 11518.5(d), to correct technical or minor changes that do not affect the factual or legal basis of the decision after non-adoption. The decision after non-adoption is amended as follows:

1. Paragraph 9, line 5: "article" should be "articles."
2. Paragraph 9, fourth from the last line: "New Your Times" should be "New York Times," and the extra period at the end of the sentence is stricken.
3. In the Legal Conclusions, paragraph 1, line 4, the word "along" should be "alone."

IT IS HEREBY ORDERED that the clerical errors on paragraph 9 and in the Legal Conclusion, in the Decision After Non-Adoption be and hereby amended and corrected nunc pro tunc as of the date of entry.

IT IS SO ORDERED August 14, 2013.



Dev Gnanadev, M.D.,
Vice-Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty Relief
of:

WILLIAM Y. MOORES, M.D.,
Physician and Surgeon's Certificate
No. G 28505

Petitioner.

Case No. 26-2011-217327

OAH No. 2012080273

DECISION AFTER NON-ADOPTION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 13, 2012, and March 11, and 19, 2013.

Esther La, Deputy Attorney General, represented the Department of Justice. Respondent was present and represented himself. The matter was submitted on March 19, 2013.

On May 3, 2013, a panel of the Medical Board of California ("Board") issued an Order of Non-Adoption of the Proposed Decision. On May 31, 2013, the Board issued an Order Correcting Nunc Pro Tunc Clerical Error in the Order of Non-Adoption of the Proposed Decision.

Oral arguments were heard on July 18, 2013 before the Board with Administrative Law Judge Karl S. Engeman presiding over the proceedings. Esther La was present on behalf of the Department of Justice, and Petitioner was not present. Ms. La additionally provided written arguments, and Petitioner did not.

Having read the transcripts and exhibits from the original hearing, and having considered oral and written arguments from Ms. La, the Board hereby issues its decision after non-adoption.

FACTUAL FINDINGS

1. William Y. Moores, M.D. (petitioner) holds physician and surgeon's certificate number G 28505. He signed a Petition for Penalty Relief, Termination of Probation, on August 8, 2011.

2. Petitioner's license was revoked by the Medical Board of California and placed on five years probation pursuant to a stipulated decision and order dated September 13, 2001, which became effective November 2, 2001. That decision was based on disciplinary action under Business and Professions Code section 2234 (unprofessional conduct). The accusation included nine causes for disciplinary action involving eight patients based on gross negligence, incompetence, and repeated negligent acts.

3. Petitioner is in compliance with all of the terms and conditions of probation, except for condition #21. By letter dated November 5, 2001, he informed the Board that, "For the immediate present I will declare that I am not going to be engaged in practicing medicine." On January 5, 2002 Petitioner again informed the Board that, "My practice situation has not changed since my letter of 11/5/01." He completed an ethics course on April 6, 2002. He completed the PACE program March 7, 2003. By letter dated March 11, 2003, the Board informed Petitioner that as of November 2, 2001 his probation was tolled pursuant to condition #21 of the Stipulation and Order. Since at least April of 2003 Petitioner has disputed the Board's decision to toll his probation on this basis.

4. Petitioner paid his cost recovery amount in full on January 8, 2003. Because his probation is tolled he has not been assessed probation monitoring costs.

5. On a petition for termination of probation, the burden rests with Petitioner to show by clear and convincing evidence that he is rehabilitated. Additionally, due to the nature of the violations, the terms of probation required Petitioner to have a practice monitor and a proctor prior to performing any surgical procedures. Petitioner has performed no surgical procedures during the term of probation. Any other medical practice performed during probation must, pursuant to condition #21, fall within the practice of medicine as defined under Business and Professions Code sections 2051 and 2052.

6. Petitioner is self-employed. He testified that he gives life-style advice to individuals and lectures on the subject of nutrition and wellness to physicians. His advice and lectures are based on his many years of experience as a heart surgeon, on research he has done in the area, and on source materials from both physicians and non-physicians. He does not generally charge for his advice. He has no records of patients he has treated. He occasionally conducts physical examination of his patients, but he has no records or documentation of such examinations. Petitioner testified that his medical activities of giving medical advice, primarily about nutrition, wellness, and preventing disease, qualifies as one of "any and all other methods" in the treatment of physical and mental conditions and qualifies as the practice of medicine under section 2051.

7. Business and Professions Code section 2068 provides that any person may provide nutritional advice or advice concerning proper nutrition, including information as to the use and role of food and food ingredients, including dietary supplements. No medical license is needed to provide nutritional and lifestyle advice.

8. Despite evidence to the contrary as noted in Factual Finding #3, Petitioner testified that he never provided the Board with a written statement or declaration that he was not practicing medicine in California.

9. The Board presented the testimony of expert witness James Nuovo, M.D. Dr. Nuovo is presently the Associate Dean for Graduate Medical Education and Designated Institutional Official for the Department of Family and Community Medicine, School of Medicine, University of California, Davis, California. Dr. Nuovo reviewed the transcript of the first two hearing dates along with the exhibits including Petitioner's article in reaching his opinions. Of the materials reviewed Dr. Nuovo found no evidence that Petitioner diagnosed any patients in accordance with the standard of practice. He opined, "The standard of practice, in my opinion, for making a diagnosis is to take a history from a patient, to perform a physical exam, to come up with an assessment in plan, based on a review of the history and exam and prior records, and including tests. And then, to recommend a course of action for treatment. And then, to document those findings in the medical record." On his review of the evidence, Dr. Nuovo found no evidence that Petitioner diagnosed, treated sick patients, operated on patients, prescribed drugs to patients, treated any disease in patients, treated any injured patients, or treated patients for any other physical or mental conditions. After reviewing Petitioner's articles, Dr. Nuovo opined that a medical license is not required to provide the advice contained in the articles to patients and that providing the advice in the articles was not the practice of medicine since the information merely "parrots the prior publication of a journalist, Michael Pollan, who has written books and has written articles in the *New York Times*, in which he presents rules for healthy eating." After reviewing the other activities claimed by Petitioner to be the practice of medicine, Dr. Nuovo found no evidence that they constituted the practice of medicine.

10. In reviewing the testimony of Petitioner's expert, Dr. Gardner, Dr. Nuovo disagreed with Dr. Gardner's claim that Petitioner was engaged in the practice of medicine when he provides through his articles, "advice in terms of lifestyle, stress management, physical activity, and disease prevention." Dr. Nuovo opined that anybody could give this information which is generally available to help people learn about healthier ways of eating. In reviewing the evidence, Dr. Nuovo said he could find no evidence that Petitioner gave patient-specific advice about nutrition. He then elaborated that patient-specific advice would require that a physician take a history, review prior medical records, perform an exam, obtain vital signs, and come up with an assessment and plan based on those patient's unique characteristics. He further noted that not all patients who are obese can be treated exactly the same way. This is because their unique medical history might require modification of treatment recommendations and testing.

11. Petitioner presented the testimony of an expert witness, Timothy Gardner, M.D. Dr. Gardner is the Medical Director for the Center for Heart & Vascular Health, Christiana Care Health System in Wilmington, Delaware. Dr. Gardner is not a California licensed physician and is also not a California lawyer, and therefore the value of his opinion is limited to his knowledge of the types of activities and services provided by Petitioner. He has attended petitioner's lectures at medical conventions. Though he acknowledged that a medical license is not required to give the nutrition and lifestyle advice that Petitioner provides, and that non-physicians who provide the same advice would not be practicing medicine, he finds that Dr. Nuovo's definition of "practicing medicine" is too narrow. He opines that since petitioner is trained as a physician, his advice on diet and life-style is practicing medicine. As evidence of Petitioner's professional activities, Dr. Gardner points to Petitioner's essay titled, "Food Rules For Healthy Living: A guide to Avoiding the Chronic Diseases of Modernity." Dr. Gardner's testimony is not received for his opinion on whether Petitioner's activities constitute the practice of medicine under Business & Professions Code sections 2051 and 2052.

12. Petitioner also presented a declaration dated January 13, 2013, and a letter dated June 24, 2011, from Richard B. Weiskopf, M.D., Professor Emeritus, Department of Anesthesia and Perioperative Care, Physiology, and Cardiovascular Research Institute, University of California, San Francisco. The letter is received as administrative hearsay; however the declaration was not admitted into evidence. Dr. Weiskopf is an acquaintance of Petitioner, and he has consulted Petitioner for advice regarding Dr. Weiskopf's condition of hyperlipidemia and a family history of heart disease three times per year; the most recent time was November 2012. Dr. Weiskopf believes that petitioner gives professional medical advice regarding avoiding disease, and that this is the recognized practice of preventive medicine which involves avoiding diseases, rather than diagnosing and treating a specific disease.

13. Petitioner seeks termination of his probation claiming that he has met all the terms and conditions of probation for over 11 years. The condition for the continued practice of medicine during probation has not however been met. The purpose of this probationary condition is to allow the Board to follow petitioner's ability to practice safely to ensure that he has fully addressed the issues that led to the discipline. Though there is some evidence that some of Petitioner's activities might constitute the practice of medicine if associated with patient care, standing alone, giving lifestyle and nutritional advice without specific association with a patient, they do not. To accept the activities of providing lifestyle and nutritional advice through casual conversation with strangers and acquaintances as the practice of medicine under Section 2051 and 2052 for probation monitoring purposes would allow probationers to defeat the rehabilitative purpose of probation. Practice during probation must be of the kind that allows the Board to monitor practice to ensure that the probationer has attained rehabilitation to the extent that he can safely return to the unrestricted practice of medicine. Petitioner provided no evidence of activities that would allow this level of evaluation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2051 authorizes a physician's and surgeon's certificate holder to use drugs or devices in or upon human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions. Providing advice on nutrition and life-style choices along does not qualify as the practice of medicine under section 2051.

2. Business and Professions Code section 2052 list activities that cannot be done without a physician and surgeon's certificate. Petitioner's activities of providing reading materials and advice on nutrition and lifestyle choices do not qualify as activities requiring a physician and surgeon's certificate and therefore are not prohibited by section 2052.

3. Business and Professions Code section 2307, subdivision (e), allows the Board to consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitation efforts, general reputation for truth, and professional ability be considered. Pursuant to the Findings set forth above, with the exception of the time spent in the PACE program, petitioner has not engaged in the practice of medicine since the inception of his probation. Petitioner has complied with all other conditions of his probation. Because the Board finds that Petitioner has not engaged in the practice of medicine since at least 2003, he has therefore not met his burden of proving rehabilitation to warrant the granting of his petition for penalty relief.

ORDER

The petition of William Y. Moores, M.D., physician and surgeon's certificate number G 28505, for termination of probation is hereby denied.

This decision shall become effective at 5 p.m. on **September 5, 2013**.

IT IS SO ORDERED this 6th day of August, 2013.

A handwritten signature in black ink, reading "Dev GnanaDev M.D.", with a horizontal line underneath.

DEV GNANADEV, M.D., Vice-Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty Relief)
of:)

WILLIAM Y. MOORES, M.D.)

Case No.: 26-2011-217327

Physician's & Surgeon's)
Certificate No: G-28505)

OAH No.: 2012080273

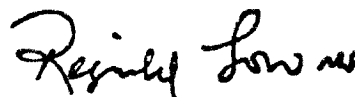
Petitioner.)
_____)

**ORDER CORRECTING NUNC PRO TUNC
CLERICAL ERROR IN ORDER OF NON-ADOPTION OF PROPOSED DECISION**

On its own motion, the Medical Board of California (hereafter "board") finds that there is a clerical error in the Order of Non-Adoption of the Proposed Decision in the above-entitled matter and that such clerical error should be corrected so that the first paragraph will read:

"The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including any argument directed at whether petitioner has provided sufficient evidence of rehabilitation to warrant termination of probation, and whether Respondent's alleged activities during probation constitute the practice of medicine under Business and Professions Code sections 2051 and 2052. The parties are hereby notified that the date for submission of arguments has been changed to June 21, 2013.

IT IS SO ORDERED on May 31, 2013



Reginald Low, M.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Penalty Relief)
of:)

WILLIAM Y. MOORES, M.D.)

Case No.: 26-2011-217327

Physician's & Surgeon's)
Certificate No: G-28505)

OAH No.: 2012080273

Petitioner.)
_____)

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit, including any argument directed at whether petitioner has provided sufficient evidence of rehabilitation to warrant termination of probation. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Regina Goins, Transcript Coordinator, Diamond Court Reporting, 1107 2nd Street, Suite 210, Sacramento, CA 95814. The telephone number is (916) 498-9288.

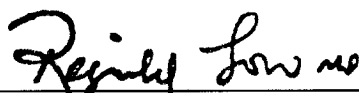
To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 263-8906
Attention: Richard M. Acosta

Date: May 3, 2013



Reginald Low, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty
Relief of:

WILLIAM Y. MOORES, M.D.,

Physician and Surgeon's Certificate No.
G 28505

Petitioner.

Case No. 26-2011-217327

OAH No. 2012080273

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 13, 2012, and March 11, and 19, 2013.

Esther La, Deputy Attorney General, represented the Department of Justice.

Respondent was present and represented himself.

The matter was submitted on March 19, 2013.

FACTUAL FINDINGS

1. William Y. Moores, M.D. (petitioner) holds physician and surgeon's certificate number G 28505. He signed a Petition for Penalty Relief, Termination of Probation, on August 8, 2011.

2. Petitioner's license was revoked by the Medical Board of California and placed on five years probation pursuant to a stipulated decision and order dated September 13, 2001, which became effective November 2, 2001. That decision was based on disciplinary action under Business and Professions Code section 2234 (unprofessional conduct). The accusation included nine causes for disciplinary action involving eight patients based on gross negligence, incompetence, and repeated negligent acts.

3. Petitioner is in compliance with all of the terms and conditions of probation, except the Board has tolled his probation for failure to practice medicine. He completed an ethics course April 6, 2002. He completed the PACE program March 7, 2003. He paid his cost recovery amount in full on January 8, 2003. Because his probation is tolled he has not been assessed probation monitoring costs.

4. The sole issue is whether or not petitioner has been practicing medicine as defined under Business and Professions Code sections 2051 and 2052. Petitioner has told the Board since at least March 16, 2003, when he objected to the Board's tolling of his probation, that he was engaged in the practice of medicine.

5. Petitioner is self-employed. He gives life-style advice to individuals and lectures on the subject to physicians. His advice and lectures are based on his many years of experience as a heart surgeon and research he has done in the area. He uses both physicians and non-physicians in his source material. He does not generally charge for his advice.

6. The Board presented the testimony of an expert witness, James Nuovo, M.D. Dr. Nuovo is presently the Associate Dean for Graduate Medical Education and Designated Institutional Official for the Department of Family and Community Medicine, School of Medicine, University of California, Davis, California. His definition of medicine was quite narrow requiring a physician to take a history, do a physical examination, assess, diagnose, order tests, and treat each patient. He did agree that it need not be in a traditional office setting. Dr. Nuovo's definition of practicing medicine was not persuasive.

7. Petitioner presented the testimony of an expert witness, Timothy Gardner, M.D. Dr. Gardner is the Medical Director for the Center for Heart & Vascular Health, Christiana Care Health System, Wilmington, Delaware. While he is not a California licensed physician, he is qualified to give an expert opinion on the definition of practicing medicine. He has attended petitioner's lectures at medical conventions. He finds that Dr. Nuovo's definition of "practicing medicine" is too narrow. He opines that since petitioner is trained as a physician, his advice on diet and life-style is practicing medicine.

8. Petitioner also presented a declaration dated January 13, 2013, and a letter dated June 24, 2011, from Richard B. Weiskopf, M.D., Professor Emeritus, Department of Anesthesia and Perioperative Care, Physiology, and Cardiovascular Research Institute, University of California, San Francisco. Dr. Weiskopf has consulted petitioner for advice regarding Dr. Weiskopf's condition of hyperlipidemia and a family history of heart disease three times per year; the most recent time was November 2012. Dr. Weiskopf finds that petitioner's medical practice involves giving professional medical advice regarding avoiding disease. This is the recognized practice of preventive medicine which involves avoiding diseases, rather than diagnosing and treating a specific disease. It is Dr. Weiskopf's opinion that petitioner's activities satisfy the conditions of the practice of medicine as set forth in Business and Professions Code sections 2051 and 2052. This opinion supplements and explains Dr. Gardner's opinion.

9. Petitioner wants to terminate his probation since he has met all the terms and conditions of probation for over 11 years. The purpose of the probation condition that requires petitioner to practice medicine during the term of probation is basically there to allow the Board to follow petitioner's ability to practice safely. Petitioner testified credibly that he has no intention of practicing cardiology or cardiac surgery in the future. It would not be against the public interest to terminate petitioner's probation at his time. He has demonstrated rehabilitation and is safe to practice medicine (giving advice on diet and life-style) without restriction.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2051 authorizes a physician's and surgeon's certificate holder to use drugs or devices in or upon human beings and **to use any and all other methods** in the treatment of diseases, injuries, deformities, and other physical and mental conditions. Surely, preventative medicine and advice on life-style choices by a physician come under this definition.

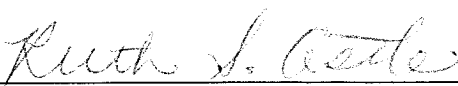
2. Business and Professions Code section 2052 list activities that cannot be done without a physician and surgeon's certificate. As a physician, petitioner was using a mode of treatment that was designed to prevent disease.

3. Business and Professions Code section 2307, subdivision (e), allows that all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitation efforts, general reputation for truth, and professional ability be considered. Pursuant to the Findings set forth above, petitioner has demonstrated good cause to grant his petition for penalty relief – termination of probation under Business and Professions Code section 2307 and Government Code section 11522, in that he has demonstrated that he is safe to practice medicine without restriction.

ORDER

The petition of William Y. Moores, M.D., physician and surgeon's certificate number G 28505, for termination of probation is hereby granted. Petitioner's probation is terminated.

DATED: April 8, 2013



RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings